

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE	)	
COMMISSION OF THE APPLICATION OF THE FUEL	)	CASE NO.
ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC	)	90-360-C
CORPORATION FROM NOVEMBER 1, 1991 TO	)	
APRIL 30, 1992	)	

O R D E R

On February 18, 1994, the parties to this case filed a 'Settlement Stipulation' and asked the Commission to approve it.

This investigation was begun by the Commission on its own motion. Overland Consultants, Inc. carefully reviewed Big Rivers' practices and presented the Commission with an extensive report. The parties and the Commission propounded extensive discovery requests and a public hearing was held at which extensive testimony was heard.

The settlement stipulation tendered by the parties in this investigation was reached without any participation by Overland or Commission staff. However, other entities which are not parties to this proceeding may well have been involved in shaping its terms. Nonetheless, the stipulation is so vague and uncertain, that a determination of its reasonableness is impossible. It will therefore not be approved. Having reached this conclusion, the

Commission has not considered whether the stipulation as submitted is binding on the parties which signed it.<sup>1</sup>

The Commission is particularly troubled by provisions of the stipulation which contemplate its approval even though neither the Commission nor the public would have the benefit of knowing:

- the nature of any orders which might in the future be entered by the U. S. Bankruptcy Court for the Western District of Kentucky;

- the nature of any agreements which might be entered by Big Rivers and its coal suppliers;

- the nature of any changes to Big Rivers' existing financing agreements;

- the basis for the stipulation's total failure to address alleged improper coal purchasing practices for the period under review; and

- the basis for the parties' apparent intention to treat as fuel costs for purposes of the fuel adjustment clause certain costs which do not come within the regulation while at the same time treating others to which it applies outside its terms.

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<sup>1</sup> On March 10, 1994, the Commission received correspondence from counsel for NSA, Inc., to the effect that certain portions of the stipulation were so vague that the parties to the stipulation were no longer able to agree on its meaning and that NSA, Inc., wished to withdraw from the stipulation. Correspondence to the same effect was received March 11, 1994 from counsel for Alcan Aluminum Corporation and for the Kentucky Industrial Utility Customers, and on March 14, 1994, from counsel for Commonwealth Aluminum Corporation.

The Commission is also troubled by a recent revelation by Big Rivers. For the fourth time during this investigation, the Commission has been advised by counsel for Big Rivers that certain documents relevant to this investigation have been overlooked. That the documents were apparently in the same office as others previously overlooked, makes this most recent admission all the more incredible. It should not happen again in this proceeding (or any other).

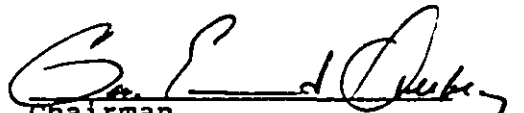
The Commission being sufficiently advised, it is ORDERED that:

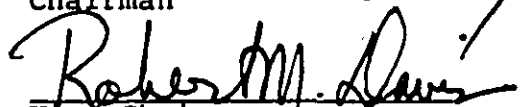
1. The Settlement Stipulation filed by the parties on February 18, 1994, is disapproved.

2. On or before April 1, 1994, Big Rivers shall conduct a complete review of all documents within its or its counsel's custody and control and its Board of Directors shall provide assurances to the Commission that it has made available for Commission review all documents relevant to this investigation.

Done at Frankfort, Kentucky, this 18th day of March, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

  
Commissioner